

REMARKS

Applicant appreciates the Examiner taking time to discuss this application in a telephone interview conducted on July 8, 2005 at 1:00pm EST. In attendance were the examiner, Richard C. Weisberger, and representing the applicant the undersigned, Denis G. Maloney, and Matthew J. Leary. Applicant argued that the C-NET press release was not a proper reference under 35 U.S.C. § 102(a) because it referred to the inventor's own work. The Examiner requested an affidavit or declaration submitted by one of the inventors to show that the press release was reporting on the work of the inventors.

Enclosed is a declaration by one the inventors, Ann. G. Neidenbach, in which she affirms that the C-NET press release reports on the work of the inventors of this patent application and is entirely derived therefrom.

The examiner rejected Claims 1-6 and 53-68 under 35 U.S.C. §102(a)/§103 as being clearly anticipated by C-NET, NASD giving Windows NT a Change in view of Nasdaq, Rule Changes.

However, "[i]t is settled that 'one's own work is not prior art under § 102(a) even though it has been disclosed to the public in a manner or form which otherwise would fall under § 102(a)'". *Mannesmann Demag Corp. v. Engineered Metal Prods. Co. Inc.*, 605 F. Supp. 1362, 1370 (D. Del. 1985), *aff'd*, 793 F.2d 1279 (Fed. Cir. 1986). MPEP §716.10 specifically addresses this situation, noting that §102(a) rejections can be overcome by an affidavit or declaration that the prior art reference used in the rejection discloses subject matter derived from the applicant rather than invented by the author of the publication. Patent & Trademark Office, MANUAL OF PATENT EXAMINING PROCEDURE § 716.10, at 700-269 (8th ed. 2005). An uncontradicted "unequivocal statement" regarding the article will be accepted as establishing inventorship. *Id.* (citing *In re DeBaun*, 687 F.2d 459, 463 (C.C.P.A. 1982)).

The enclosed affidavit of Ann. G. Neidenbach provides an "unequivocal statement" that the C-NET press release reports on the work of the inventors of this patent application and is entirely derived therefrom. In light of this affidavit, Applicant requests that the CNET article be removed as a reference.

In addition, the Applicant maintains that regardless of the fact the C-NET press release reports on the author's own work, the press release is still not a valid reference. The CNET article is a non-enabling disclosure at least because it does not place the public in possession of the claimed invention and is thus defective as prior art. *In re Brown*, 329 F.2d 1006, 141 USPQ 245 (CCPA 1964). Applicant also maintains that the C-NET press release does not inherently anticipate under §102. In order for a reference to inherently anticipate under §102, following the reference must inevitably produce the claimed subject matter. *In re King*, 801 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

In light of the disqualification of the C-NET press release as a proper reference, applicant respectfully submits that any rejection of Claims 1-6 and 53-68 under 35 U.S.C. § 103, which relies in part on the C-NET press release, is also improper and should be withdrawn.

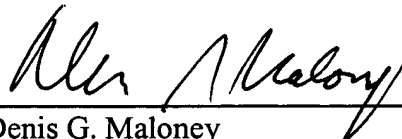
The secondary reference cited by the Examiner, "Rule Changes Regarding ECNs" neither discloses nor teaches any methods for detecting market conditions, receiving messages in a system, nor for transmitting alert messages. Accordingly, Claim 1 is not anticipated or rendered obvious under §103 by the cited Rule Changes memo. For at least the same reasons, Claims 2-6 and 53-68 are also not anticipated or rendered obvious under §103 by the cited Rule Changes memo.

Enclosed is a \$120 check for the Petition for Extension of Time fee. Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

Date: _____

8/25/01



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